

228649

BEFORE THE  
SURFACE TRANSPORTATION BOARD

TOTAL PETROCHEMICALS USA, INC.

Complainant,

v.

CSX TRANSPORTATION, INC; CAROLINA  
PIEDMONT DIVISION; MADISON  
RAILROAD; MOHAWK, ADIRONDACK &  
NORTHERN RAILROAD CORP.; NEW  
HOPE & IVYLAND RAILROAD;  
R.J. CORMAN RAILROAD COMPANY  
(MEMPHIS); and SEQUATCHIE  
VALLEY RAILROAD COMPANY

Defendants.

Docket No. NOR 42121

ENTERED  
Office of Proceedings

JAN 19 2011

Part of  
Public Record

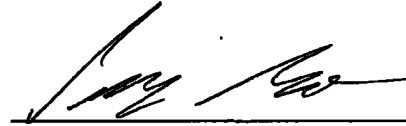
SECOND MOTION TO DISMISS COMPLAINT

TOTAL PETROCHEMICALS USA, INC. ("TPI") hereby moves to dismiss the Complaint in the above-captioned proceeding against the following four defendants: Carolina Piedmont Division ("CPDR"); Madison Railroad ("CMPA"); New Hope & Ivyland Railroad ("NHRR"); and Sequatchie Valley Railroad Company ("SQVR"). TPI has reached settlements with CPDR, CMPA, NHRR, and SQVR. TPI will shortly file a Fourth Amended Complaint which reflects the removal of these four defendants and the revised CSXT tariff rates that TPI has challenged in this proceeding.

TPI is in discussions with the two remaining shortline defendants in this proceeding, the Mohawk, Adirondack & Northern Railroad Corporation ("MHW") and the R.J. Corman Railroad Company (Memphis) ("RJCM"). TPI remains hopeful that settlements can be achieved with these two carriers such that they can also be dismissed from this case. If negotiations with

one or both of these remaining shortlines are successful, TPI will file an additional motion to dismiss and amended complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', is written over a horizontal line.

Jeffrey O. Moreno  
David E. Benz  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 331-8800

January 19, 2011

**CERTIFICATE OF SERVICE**

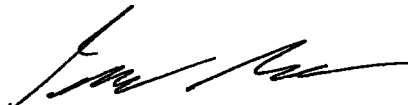
I hereby certify that this 19th day of January 2011, I served a copy of the foregoing upon Defendants in the following manner and at the addresses below:

**Via e-mail and first-class mail to:**

<p>G. Paul Moates Paul Hemmersbaugh Sidley Austin LLP 1501 K Street, NW Washington, DC 20005</p> <p>pmoates@sidley.com phemmersbaugh@sidley.com</p> <p><i>Counsel for CSXT</i></p>	<p>Eric Hocky Thorp Reed &amp; Armstrong LLP One Commerce Square 2005 Market Street, Suite 1000 Philadelphia, PA 19103</p> <p>ehocky@thorpreed.com</p> <p><i>Counsel for New Hope &amp; Ivyland Railroad</i></p>
<p>Louis E. Gitomer Law Offices of Louis E. Gitomer 600 Baltimore Avenue Suite 301 Towson, MD 21204</p> <p>Lou_Gitomer@verizon.net</p> <p><i>Counsel for Carolina Piedmont Division</i></p>	<p>David F. Rifkind Leonard, Street and Deinard 1350 I Street, NW, Suite 800 Washington, DC 20005</p> <p>david.rifkind@leonard.com</p> <p><i>Counsel for Madison Railroad</i></p>
<p>John Herbrand General Counsel Mohawk, Adirondack &amp; Northern Railroad Corp. 1 Mill Street, Suite 101 Batavia, NY 14020</p> <p>jsh@herbrandlaw.com</p>	<p>R.J. Corman Railroad Group Attn. Bill Henderson P.O. Box 788 Nicholasville, KY 40340</p> <p>bill.henderson@rjcorman.com</p> <p><i>Designated representative of R.J. Corman Railroad Company (Memphis)</i></p>

**Via overnight carrier to:**

Sequatchie Valley Railroad Attn. Dick Abernathy (President) 595 Minkslide Road Shelbyville, TN 37160	
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Jeffrey O. Moreno